Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Assessment and Collection of	)	MD Docket No. 05-59
Regulatory Fees for Fiscal Year 2005	)	

To: The Commission

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

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The Satellite Industry Association ("SIA"), pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby submits its comments in response to the *Notice of Proposed Rulemaking* in the above-captioned proceeding, FCC 05-35, rel. Feb. 15, 2005 (the "*Notice*"). SIA strongly supports the proposal to replace the current international bearer circuit regulatory fee with a flat fee collected from holders of Section 214 authorizations and cable landing licenses. In addition, SIA outlines here changes that are needed to correct fundamental flaws in the Commission's current system of billing for space station regulatory fees.

I. INTRODUCTION AND SUMMARY

The Satellite Industry Association is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, remote sensing operators, and

ground equipment suppliers. SIA is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.[1]

The *Notice* seeks comment on two matters that directly affect SIA members. First, the Commission requests input on possible changes to the regulatory fee collected from international service providers, asking whether it would be preferable to use a basis other than active circuits for assessing this fee. *Notice* at ¶ 12. In particular, the Commission notes that in response to concerns raised during the proceeding on Fiscal Year 2004 regulatory fees, the Commission concluded that "a fee system based on cable landing licenses and international Section 214 authorizations, rather than international bearer circuits, would be administratively simpler for both the Commission and carriers."[2] The Commission seeks comment on this approach or alternative methods for recovering the current international bearer circuit revenue requirement, and requests that commenters address the Commission's legal authority to reform the international bearer circuit fee. *Id*. at ¶ 16.

The Commission notes that Tyco, a private submarine cable operator, had argued in the FY 2004 proceeding that assessing a fee against international providers based on active circuits was flawed because it did not reflect reduced

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[1] SIA includes Executive Members The Boeing Company; Globalstar LLC; Hughes Network Systems, Inc.; ICO Global Communications; Intelsat; Iridium Satellite LLC; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; Northrop Grumman Corporation; PanAmSat Corporation and SES Americom, Inc. and Associate Members Eutelsat Inc., Inmarsat Ltd., New Skies Satellites Inc., Stratos Global Corporation, and The DirecTV Group.

[2] *Id.* at ¶ 15, *citing* Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order*, 19 FCC Rcd 11662 at ¶ 29 (2004) ("*FY 2004 Order*").

regulation of non-common carrier submarine cable operators and imposed unnecessary administrative burdens on such operators. *Id*. at ¶ 14. Tyco asked the Commission to place non-common carrier submarine cable operators in a separate category and adopt a flat-per-cable-landing-license fee for such operators. *Id*. SIA filed reply comments in the FY 2004 proceeding demonstrating that if the Commission adopted the approach suggested by Tyco, it must include non-common carrier satellite operators in the same category as private submarine cable operators.[3] The *Notice* here asks commenters that support Tyco's fee approach to suggest a means of allocating the revenue requirement among fee categories. *Notice* at ¶ 17.

SIA urges the Commission to revise the fee schedule to recover the international bearer circuit revenue requirement through a flat fee assessed on holders of Section 214 authorizations and cable landing licenses. This approach would more accurately align cost recovery with the categories of operators that benefit from Commission regulatory activities in this area. Furthermore, as the Commission concluded in last year's proceeding, this method would reduce administrative burdens on carriers and Commission staff alike and encourage innovative use of facilities. If, on the other hand, the Commission decides to proceed with the fee reallocation proposed by Tyco, all non-common carrier facilities operators must be treated in the same manner.

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[3] Reply Comments of the Satellite Industry Association, MD Docket No. 04-73, filed Apr. 30, 2004 ("SIA FY 2004 Reply").

Second, the *Notice* seeks comment on the process for collecting space station regulatory fees. The Commission observes that in FY 2004, it initiated a system of sending bills to satellite licensees. *Id*. at ¶ 44. The Commission proposes to continue its billing initiative and seeks comment on that proposal. *Id*. at ¶¶ 45-46.

SIA opposes continued use of the Commission's billing system unless significant improvements are made in it because there are fundamental flaws in the current process. SIA describes below the changes that are necessary in the billing system: (1) the inclusion of call sign information on bills; (2) generation of a single bill per licensee; (3) the ability to modify or supplement incorrect bills; (4) earlier creation and delivery of bills; and (5) the designation of Commission staff knowledgeable about satellite licensing to assist in the resolution of billing problems.

II. THE COMMISSION SHOULD ADOPT A MORE EQUITABLE AND EFFICIENT METHOD TO RECOVER THE INTERNATIONAL BEARER CIRCUIT REVENUE REQUIREMENT

SIA strongly supports reform of the Commission's regulatory fee schedule with respect to the international bearer circuit fee. The current framework fails to fairly apportion costs of international communications regulation and imposes unwarranted administrative burdens on non-common carrier satellite operators.

A. The Commission Should Recover the International Bearer Circuit Revenue Requirement from Holders of Section 214 Authorizations and Cable Landing Licenses

Under the current international bearer circuit fee regime, SIA members are subjected to unfair costs. Basing cost recovery on Section 214 authorizations and cable landing licenses rather than international bearer circuits would redress this problem and significantly simplify fee administration.

Most importantly, this change in the fee framework would align fee collection more closely with entities that are subject to and benefit from the Commission's international telecommunications regulatory activities. Non-common carrier satellite operators, unlike international common carriers and cable landing licensees, are not subject to any meaningful regulation with respect to their provision of international circuits. Rather, the Commission's regulation in this area focuses on the Title III radio licenses that are required before a satellite may be launched and operated. This Title III regulation is the subject of separate regulatory fees that are by far the highest fees imposed per station or per system.[4]

Once the Commission issues a Title III radio license to operate a satellite on a non-common carrier basis, the satellite operator may provide domestic and international service anywhere within the satellite's footprint without the need for additional authority. Thus, there is no entry or exit regulation of non-common carrier satellite operators with respect to their international services, there is no

[4] In fiscal year 2004, the annual fees were $114,675 per geostationary orbit space station and $131,400 per non-geostationary orbit system.

regulation of the "landing points" served by their satellites, and there is no rate regulation.

Under the regulatory fee schedule as initially adopted by Congress and implemented by the Commission, non-common carrier satellite operators were not subject to the international bearer circuit fee. The Commission expanded application of the fee to include non-common carrier satellite operators in 1997 based on an expectation that these operators would become the subject of regulatory activity, independent of Title III licensing, that would be comparable to the regulatory activity generated by international common carriers and cable landing licensees.[5] That regulatory activity, however, never materialized. Commission decisions since 1997, moreover, have streamlined Title III regulation of non-common carrier satellite operators.[6]

Although non-common carrier satellite operators generate no regulatory activity at the Commission by virtue of their provision of international circuits, the international bearer circuit fee imposes a significant administrative burden on those operators. In order to calculate the amounts owed under the

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[5] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1997, *Report and Order*, 12 FCC Rcd 17161, 17187-89 (1997).

[6] *See, e.g.,* Amendment of the Commission's Space Station Licensing Rules and Policies, *Fourth Report and Order*, 19 FCC Rcd 7419, 7419 (2004) (expanding electronic filing of satellite applications and streamlined fleet management procedures, as "another step in our continuing effort to eliminate outdated regulatory requirements and expedite provision of satellite services to the public"); Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, 12 FCC Rcd 24092 (1997), *recon.* 15 FCC Rcd 7207 (1999); *recon. denied* 16 FCC Rcd 19794 (2001) (eliminating "ECO-SAT" test for access to U.S. market).

international bearer circuit fee, non-common carrier satellite operators must make complicated determinations that serve no meaningful business purpose and are required only to comply with the fee rules.

Each element of the international bearer circuit definition – "international," "active circuit," and "not provided to a common carrier" – poses special challenges for satellite operators. First, an operator typically has no basis for knowing whether its customer is using satellite capacity for U.S. international service, as opposed to U.S. domestic service or wholly foreign service. A customer may disclose its intended use of capacity in the course of negotiating an agreement, but even then, the use of the satellite facility might change over time without the operator's knowledge. Or the satellite operator's customer might not plan to use the capacity at all – the buyer might instead be a reseller. Only in the relatively rare instances where a satellite operator is providing an end-to-end international service will the operator know for sure that its capacity is being used for an international transmission.

Assessing whether a circuit was "active" at the prescribed date poses another hurdle. Satellite capacity is typically sold on a full transponder or fractional transponder basis, and operators generally have no need to track whether customers are actually using the capacity they have purchased at a particular time. Furthermore, transponders providing occasional use satellite service may have multiple customers, and multiple periods of down time, in any given day. Thus, determining whether capacity was actively being used for an international service

on the specific day used for regulatory fee calculations may require extensive investigation.

Finally, operators are entitled to an exemption from the regulatory fee if the circuit was provided to an authorized U.S. international common carrier, but they rarely are in a position to take advantage of this exemption. An operator simply has no reason to know which of its customers have international Section 214 authority and which do not. Thus, apart from the most obvious cases, operators are likely to err on the side of caution by paying the fee. As a result, there is probably significant double-payment of bearer circuits carried over satellite facilities.

These problems in turn complicate the Commission's administration of the international bearer circuit fee. Because the quantity of international bearer circuits provided by non-common carrier satellite operators is not developed for any purpose other than the filing of fees, the Commission has no meaningful way to predict the number of such circuits, other than using an estimate based on the prior year's figures. Furthermore, it is virtually impossible for the Commission to evaluate the accuracy of the information that is provided.

Collecting the revenue requirement via a fee based on Section 214 authorizations and cable landing licenses would eliminate these problems. Operators subject to the fee could easily determine their payment liability, and the Commission could predict and verify fee units using information already in its database. Thus, the change would permit the Commission to collect the revenue on an equitable basis with a minimal administrative burden.

In addition, moving away from a circuit-based fee would encourage full utilization of capacity. The Commission observed in the FY 2004 proceeding that "basing the fees on the active circuits may provide disincentives to initiate new services and to use new facilities efficiently."[7] A flat fee would remove this disincentive.

SIA also believes that the Commission has the necessary legal authority to revise the means of collecting the international bearer circuit revenue requirement. As Tyco observes in its filing relating to this issue, the Commission's regulation of international services has evolved substantially since the regulatory fee system was adopted.[8] In particular, the Commission's focus has shifted to a more market-based approach, with an emphasis on "opening borders and spurring competition." *Id*. at 2. Tyco cites to a number of specific regulatory changes, including implementation of the U.S. commitments in basic telecommunications under the WTO agreement, the Telecommunications Act of 1996, the streamlining of international Section 214 regulation, and the streamlining of submarine cable regulation. *Id*. at 1-2.

SIA agrees with Tyco that these changes warrant revision of the regulatory fee schedule pursuant to Section 9(b)(3) of the Communications Act, but disagrees with Tyco's suggestion that only private submarine cable operators should benefit from such a revision. The regulatory changes Tyco has identified – with the

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7 *FY 2004 Order* at ¶ 29, citing Tyco Comments at 10.

8 *See* Letter of Mr. Kent D. Bressie, *et al.*, counsel to Tyco Telecommunications (US) Inc., to Mr. David Krech dated Dec. 15, 2004.

sole exception of the submarine cable streamlining proceeding – are changes that affect every aspect of the international services industry. The Commission has clearly moved away from circuit-based regulation of international operations, and as a result, using circuit-based revenue collection is no longer appropriate. The Commission should instead move to recovery of revenue based on Section 214 authorizations and cable landing licenses.

B. If the Commission Adopts Tyco's Proposal, All Non-Common Carrier Facilities Should Be Treated Similarly

For the reasons discussed above, SIA believes that Section 214 authorizations and cable landing licenses, rather than bearer circuits, should be used for the assessment of fees for international services. The *Notice*, however, also seeks comment on Tyco's original proposal for bearer circuit reform, which would have modified fee collection only with respect to non-common carrier submarine cables. *Notice* at ¶ 17. If the Commission pursues this approach, it must grant the same relief to all operators of non-common carrier facilities.

As SIA explained in its reply in the FY 2004 proceeding, reform that benefited only private cable operators would exacerbate, not remedy, the unfairness of the current system.[9] Like private cable operators, non-common carrier satellite providers do not impose Title II regulatory burdens on the Commission. Meanwhile, such satellite operators bear the full burden of Title III regulation of satellite facilities, including paying significant space station regulatory fees.

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9 SIA FY 2004 Reply at 3.

If the Commission retained the international bearer circuit fee but separated out only private submarine cable operators, non-common carrier satellite operators would shoulder an even greater proportion of the current revenue requirement than at present. There is no possible justification for such an outcome.

III. SIGNIFICANT IMPROVEMENTS ARE NEEDED IF THE COMMISSION IS TO RETAIN ITS BILLING SYSTEM FOR SPACE STATION LICENSES

SIA strongly supports the Commission's efforts to modernize its procedures to facilitate the efficient collection of regulatory fees. *See Notice* at ¶ 41. However, the system used in FY 2004 to bill space station fees was fundamentally flawed. SIA identifies below important modifications that are needed to address these flaws. If these changes cannot be implemented for FY 2005, we ask that billing for space station fees be discontinued until these improvements have been made.

SIA members experienced a wide range of problems during last year's billing cycle. In some cases, no pre-printed bill was received at all, while in others multiple bills were received, each apparently for a different space station licensed to the same operator. Several SIA members report having received bills that substantially undercounted the number of space stations for which they owed fees. Inexplicably, however, the bills issued in FY 2004 lacked call sign information, making it impossible for most operators to determine which satellites were missing from their bills.

Attempts to seek assistance with billing issues were complicated by timing factors. By the time operators received their bills, the payment due date was looming, and Commission staff were handling an extremely high volume of calls on fee issues. As a result, satellite operators' calls to Fee Division staff seeking assistance in addressing bill errors often were not returned. When reached, the staff could not identify what facilities were covered by bills that had been issued, and instead advised operators to create their own Form 159's to pay for the space station licenses the operators knew they held. In some cases, the Commission's system would not accept payment for the space stations that were not covered by the bills that were sent, and the Fee Division staff had to make manual adjustments before a Form 159 could be generated. In another case, after full payment was made by an operator using a Form 159 that listed call signs, the Commission's system reflected non-payment of fees because – as later explained by the Commission staff – the call signs listed on the Form 159 could not be matched to the invoices.

Thus, the bills generated for space station licensees were simply a waste of the Commission's resources. The information in the bills could not be relied on by licensees, who instead had to make their own calculations and develop their own forms, just as they did in prior years when no bills were sent by the Commission.

From an operator's standpoint, however, the billing wasn't just a wasted effort, it imposed additional burdens on licensees. Many operators spent

significant time and effort attempting to resolve inconsistencies on the FCC-generated bills. Even worse, one operator was temporarily put on the Commission's "red light" list because the Commission staff was unable initially to reconcile the fee payment made by the operator using a Form 159 with the bills that had been sent by the FCC.

In other words, the Commission's FY 2004 space station billing system ended up leaving many operators worse off than they would have been if no bills had been sent. SIA requests that the Commission immediately make changes in the current billing system. If necessary, the Commission should discontinue space station billing until the following corrective measures have been implemented:

1. Call signs included on bills to permit operators to verify the accuracy of the billing information.
2. Issuance of one bill to each licensee listing all call signs the Commission believes the licensee owes fees for.
3. Procedures in place to permit a bill to be modified or supplemented if it is incorrect.
4. Bills generated and mailed well in advance of the payment deadline so that operators have a reasonable period to review the bill, seek additional information if needed, and correct any errors prior to the time fees are due.
5. Commission staff members knowledgeable about satellite licensing designated to be available to assist operators by answering questions and resolving any problems.

These changes are critical if the Commission is going to develop a space station billing system that promotes efficiency. SIA understands that FY 2004 was the first test of space station billing, and thus it is not surprising that flaws were uncovered. SIA stands ready to assist the Commission in any way we

can to help resolve these issues. However, we ask that the FCC not continue to employ the current billing system until the Commission has implemented the necessary reforms.

IV. CONCLUSION

For the foregoing reasons, SIA requests that the Commission revise its process for collecting the international bearer circuit revenue requirement to assess fees on holders of Section 214 authorizations and cable landing licenses. SIA also asks that the Commission's billing program for space station regulatory fees be suspended until major flaws in the program have been addressed.

Respectfully submitted,

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